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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ANNETTE FLORES,

Plaintiff and Respondent,

v.

ERIC JOHN MERCADO,

Defendant and Appellant.

B221917

(Los Angeles County
Super. Ct. No. VQ015601)

APPEAL from an order of the Superior Court of Los Angeles County. Daniel S. Murphy, Judge. Affirmed.

Eric John Mercado, in pro. per., for Defendant and Appellant.

Annette Flores, in pro. per., for Plaintiff and Respondent.

* * * * *

The trial court granted plaintiff and respondent Annette Flores's (Flores) application for a domestic violence restraining order against defendant and appellant Eric John Mercado under the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.).¹ Appellant contends that the evidence was insufficient to support the issuance of the order. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Flores and appellant were involved in a romantic relationship until sometime in mid-October 2009. They continued to exchange numerous text messages during the rest of October and the beginning of November 2009, and spoke by telephone on at least two occasions during that period. According to Flores, through much of October she communicated with appellant to try to break up with him and "push him away" in such a manner that he would not become upset. Ultimately, on October 19, 2009, she told him she did not want to see him anymore. Flores, conceded, however, that she continued to exchange text messages with appellant even after that date.

On the evening of November 6, 2009, appellant went to Flores's house and called to her to open the door and let him in. The following day, he returned to her home and convinced her children to let him in the house while she was in the shower. On November 8, 2009, appellant threatened that Flores had better let him in the house that evening after her children were asleep, or else he would do something that she would discover later that week.

Flores applied for a domestic violence restraining order against appellant on November 9, 2009. In support of the application, she outlined appellant's conduct over the previous three days. The trial court issued a temporary restraining order against appellant that day and set the matter for hearing on December 1, 2009. Appellant filed an answer on November 17, 2009, which included a declaration describing the parties' relationship in October and November 2009.

¹ Unless otherwise indicated, all further statutory references are to the Family Code.

At the hearing, the trial court initially appeared reluctant to issue a restraining order, given that appellant appeared willing to abide by an informal request that he stop texting or contacting Flores. At that point, however, Flores testified that appellant had sent her a text message the previous evening in which he stated: “I have been nothing but faithful to you and still am. I love you so much, baby. How much more pushing are you going to do? This is time we can be happy. I miss staring into your eyes and you tracing my face. How much love I see.” Appellant averred that he accidentally sent the message—which was a copy of a message previously sent to Flores in October 2009—when he was “downloading new information from my text messages from the subscriber[.]” Flores claimed the text message was further evidence that appellant would not leave her alone.

At the conclusion of the hearing, the trial court found good cause for the issuance of a domestic violence restraining order. The trial court stated that it did not find appellant’s testimony credible with respect to the most recent text message, adding: “I find that was an intentional act on your part. And that was one of the major bases for granting this restraining order.” Appellant was ordered to stay at least 100 yards away from Flores and her children, and further ordered, among other things, not to contact them directly or indirectly, or send messages, mail or e-mail to them.

This appeal followed.²

DISCUSSION

The purpose of the DVPA is to “‘prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.’ (Fam. Code, § 6220.)” (*Quintana v. Guijosa* (2003) 107 Cal.App.4th

² A restraining order issued under the DVPA is in the nature of an order granting an injunction and is therefore appealable. (Code Civ. Proc., § 904.1, subd. (a)(6); cf. *McLellan v. McLellan* (1972) 23 Cal.App.3d 343, 357 [temporary restraining order is separately appealable].)

1077, 1079.) Pursuant to section 6300,³ “a domestic violence restraining order may be issued ‘if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.’” (*Quintana v. Guijosa, supra*, at p. 1079; see also *Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 137 [the DVPA “require[s] a showing of past abuse, not a threat of future harm”].) The behavior that may be enjoined under section 6320 includes “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.” (§ 6320, subd. (a); accord, *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.) Courts construe the DVPA liberally, and may issue a domestic violence restraining order when the applicant makes the requisite showing by a preponderance of the evidence. (*Gdowski v. Gdowski, supra*, at p. 137.)

We review the issuance of a domestic violence restraining order for an abuse of discretion. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) “‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citation.]” (*Ibid.*)

Here, the trial court issued the domestic violence restraining order after Flores submitted a declaration describing appellant’s repeatedly contacting her and entering her home without her permission, and after she testified about the text message that appellant

³ Section 6300 provides: “An order may be issued under this part, with or without notice, to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit or, if necessary, an affidavit and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.”

sent her the day before the hearing. “A trial court is vested with discretion to issue a protective order under the DVPA simply on the basis of an affidavit showing past abuse.” (*Nakamura v. Parker, supra*, 156 Cal.App.4th at p. 334.) Given the information before it, the trial court properly exercised its discretion in issuing a domestic violence restraining order.

Appellant has failed to demonstrate any abuse of discretion. We reject his contention that his sending the most recent text message was an inadequate basis for the issuance of the restraining order. According to section 6203, “abuse” within the meaning of section 6300 includes engaging “in any behavior that has been or could be enjoined pursuant to Section 6320.” (§ 6203, subd. (d).) Such behavior includes “contacting, either directly or indirectly, by mail or otherwise . . . or disturbing the peace of the other party” (§ 6320, subd. (a); see also *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1299 [a trial court may impose a domestic violence restraining order based solely on nonviolent conduct, including “the restrained party placing annoying telephone calls or sending unwanted e-mails, letters, or the like”].) Though appellant maintains that he sent the text message accidentally, the trial court evaluated his testimony and found it not credible. We cannot reweigh the evidence or disturb the trial court’s credibility determinations. (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 544, overruled on another point in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574; *Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

Similarly we reject appellant’s contention that the trial court abused its discretion because a domestic violence restraining may only be issued upon a showing of a threat of future harm. The law is to the contrary. As the court explained in *Gdowski v. Gdowski, supra*, 175 Cal.App.4th at page 137, “Family Code section 6300 . . . require[s] a showing of past abuse, not a threat of future harm. Family Code section 6300 has been interpreted to permit a trial court ‘to issue a protective order under the DVPA simply on the basis of an affidavit showing past abuse.’ [Citation.]”

Finally, we reject appellant’s contention that this case is analogous to *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, a case which involved the issuance of a

restraining order under Code of Civil Procedure section 527.8, a statute involving protection from workplace violence or threats of violence. “The DVPA . . . permit[s] issuance of protective orders on a different, broader basis than permitted under Code of Civil Procedure sections 527.6 and 527.8. [Citation.] Additionally, a lower level of proof is required for issuance of a protective order under the DVPA . . . —a preponderance of the evidence, rather than clear and convincing evidence. [Citations.]” (*Gdowski v. Gdowski*, *supra*, 175 Cal.App.4th at p. 137.) Because the DVPA is unlike Code of Civil Procedure section 527.8 in that it affords broader protection and requires a lesser standard of proof, we find no basis to rely on cases analyzing such a different statutory scheme.

DISPOSITION

The domestic violence restraining order filed December 1, 2009, is affirmed.
Flores is entitled to recover her costs on appeal.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST